

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

....

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c).

A “substantial showing of the denial of a constitutional right” requires a demonstration “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were “adequate to deserve encouragement to proceed further.”” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

The issues raised in the § 2255 motion regarding Claim One was carefully considered. The claim, arguing that counsel was ineffective for not arguing that the Defendant was entitled to the benefit of the safety valve, was denied because the Defendant lacked credibility and did not fulfill the fifth requirement of the safety valve criteria. Therefore, for the reasons set out in the Court’s previously issued Memorandum and Order denying the first claim of the Defendant’s § 2255 motion, the Court concludes that the Defendant has not made a substantial showing of the denial of a constitutional right as required by 28 U.S.C. § 2253(c).

IT IS ORDERED:

1. The Defendant’s motion for a certificate of appealability (Filing No. 240) is denied;
2. The Court denies the Defendant’s motion for leave to proceed in forma pauperis on appeal (Filing No. 241);

3. The Clerk of Court is directed to send a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals; and
4. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

DATED this 11th day of August, 2010.

BY THE COURT

s/Laurie Smith Camp
United States District Judge